

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 89**

**[AMS-FRL-XXXX-X]**

**RIN XXXX-XXXX**

**Control of Emissions From New Nonroad Diesel Engines: Amendments to  
the Nonroad Engine Definition**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is issuing a direct final rule revising the definition of nonroad engines to include all diesel-powered engines used in agricultural operations in the State of California that are certified by the engine maker to meet the applicable nonroad emission standards. Our rule will consider such engines as nonroad engines without regard to whether these engines are portable or transportable or how long these engines remain in one fixed location at a farm.

**DATES:** This direct final rule is effective on May 14, 2003, without further notice, unless we receive adverse comments by [insert 30 days after FR publication], or receive a request for a public hearing by [insert 15 days after FR publication]. Should we receive any adverse comments on this direct final rule, we will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect.

**ADDRESSES:** Comments: All comments and materials relevant to today's action should be submitted to Public Docket No. OAR-2003-0046 at the following address: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

**Docket:** Materials relevant to this rulemaking are contained in Public Docket Number OAR-2003-0046 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566-1742, and by facsimile at (202) 566-1741. The telephone number for the Air Docket is (202) 566-1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

**FOR FURTHER INFORMATION CONTACT:** Robert Larson, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, Transportation and Regional Programs Division, 2000

Traverwood Drive, Ann Arbor, MI 48105; telephone (734) 214-4277, fax (734) 214-4956, e-mail [larson.robert@epa.gov](mailto:larson.robert@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### *A. Regulated Entities*

Entities potentially impacted by this change in regulation are farming interests in the State of California and those interest that manufacturer or put into commerce new, compression-ignition nonroad engines, including:

<u>Category</u>	<u>NAICS codes</u>	<u>Examples of potentially regulated entities</u>
Manufacturing	333618	Manufacturers of new nonroad diesel engines
Agriculture, Forestry, 111XXX		Farms with crop production
Fishing, Hunting		
Agriculture, Forestry, 112XXX		Farms with animal production
Fishing, Hunting		
Manufacturing	333111	Farm machinery and equipment

#### *B. How Can I Get Copies Of This Document ?*

1. *Docket.* EPA has established an official public docket for this action under Air Docket ID No. OAR-2003-0046. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential

Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

2. *Electronic Access.* You may access this Federal Register document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/edocket/> to submit or view public comments, access the index of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search" and key in the appropriate docket identification number.

EPA is publishing this rule without a prior proposal. However, if we receive adverse comment on this rulemaking, we will publish a timely withdrawal in the Federal Register indicating that this rule is being withdrawn due to adverse comment. In the "Proposed Rules" section of today's Federal Register publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final Rule if adverse comments are filed. This rule will be effective on May 14, 2003, without further notice unless we receive adverse comment by [insert 30 days after FR publication], or receive a request for a public hearing by [insert 15 days after FR publication]. We may address all adverse comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period.

## **II. Summary of Rule**

The change to the definition of nonroad engine is intended to encourage agricultural operations in the State of California to reduce emission from their existing stationary diesel-powered<sup>1</sup> engines by replacing them with engines certified to the emission standards for nonroad engines, thereby greatly reducing NOx emissions from these engines. The rule does not require the replacement of existing engines with certified engines. However, as explained below, EPA believes that owners of engines will choose to replace them voluntarily.

The Clean Air Act divides internal combustion engines into three categories: stationary internal combustion engines, engines used in highway motor vehicles, and nonroad engines. The last category includes virtually all mobile engines that are not used in motor vehicles. Nonroad engines are considered mobile sources under the Act and are regulated by EPA under section 213 of the Act. However, the boundaries between these three categories of engines is not well delineated in the Act, so EPA promulgated a rule defining “nonroad engine,” exercising its authority to clarify these boundaries (59 Fed. Reg. 31306, June 17, 1994). See 40 C.F.R. § 89.2. The current definition of nonroad engine requires that the engine meet one of several criteria primarily based on how it is used. For example, the engine is defined as a nonroad engine if it is used to propel a piece of mobile equipment such as a bulldozer or farm tractor or if it is used in equipment that is propelled while performing its function such as a lawn mower. In addition, the

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<sup>1</sup>In this preamble, references to diesel-powered engines or diesel engines denotes engines operating over what is commonly referred to as the diesel engine cycle, also known as the compression ignition cycle. It is not limited to engines running on diesel fuel. For example, engines fueled with diesel fuel, compressed natural gas (CNG), or other fuel, may be diesel-powered engines.

engine is considered a nonroad engine if it is used in a piece of equipment that is portable or transportable. Such equipment could include a pump mounted on a trailer or on a set of skids for the purpose of moving the equipment from one location to another for operation in multiple locations. However, such an engine would not be considered a nonroad engine if the engine or the equipment in which it is located is actually used in one fixed location for more than 12 consecutive months. If an engine is located in one place and operated more than 12 consecutive months or otherwise does not meet the definition of nonroad engine (for example, if it is permanently attached to one location), the engine is not considered a nonroad engine and is not subject to EPA's emission standards for nonroad engines. Instead, it is generally considered stationary and is subject to regulation under Title I and V of the Clean Air Act.

In the case of agricultural pump engines used in the State of California, EPA estimates that approximately half of these fall under the definition of nonroad engines due to their portability while the rest are considered stationary. Other than portability, both sets of engines perform basically the same set of functions and operate similarly. Thus, a farming operation could have engines of the same horsepower and even the same manufacturer performing the same basic function of powering a pump, but one would be considered a mobile source nonroad engine subject to the requirements established under Title II of the Clean Air Act while its counterpart is treated as stationary and subject to the provisions of Title I and V of the Clean Air Act.

In California, stationary agricultural pump engines have historically not been required to reduce their emission levels<sup>2</sup>. In contrast, nonroad engines have emission standards in place

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<sup>2</sup>California state law presently exempts these engines from all New Source Review and Title V permitting requirements as well as any local operating permit requirements. As a result of this exemption, EPA recently proposed to find that the California State Implementation Plan is

which have substantially improved their emission performance. Thus, using the example case from the previous paragraph, an agricultural operation could have two pump engines identical in function except the one considered a nonroad engine could have significantly better emission performance than its counterpart stationary pump engine. Clearly, from an emission performance standpoint, it would be preferable to have both engines meeting the lower emission levels of the nonroad engine.

Due to the substantial number of agricultural pump engines in use in California, particularly concentrated in the major agricultural areas such as the San Joaquin Valley, and due to the fact that the portion of these engines installed in stationary pumps have not been previously controlled (except perhaps by voluntary action of the owner<sup>3</sup>), we believe it would be environmentally beneficial to encourage agricultural operations to replace relatively high emitting stationary pump engines with engines meeting the nonroad emission standards. The State of California has in fact acted since 1999 to reduce the emissions from these stationary engines by replacing these stationary engines through its Carl Moyer program which has provided funding for the purchase of new engines certified to meet the emission standards applicable to new nonroad engines.

EPA is changing the definition of nonroad engine to include diesel engines used in agricultural operations in the State of California that are certified by the engine manufacturer to

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substantially inadequate. 68 Fed. Reg. 7327 (February 13, 2003)

<sup>3</sup> Some pieces of stationary agricultural equipment use engines that are certified to nonroad engine standards, or that are identical to certified engines. Internal combustion engines can be manufactured for many uses, and some engines manufactured to meet the nonroad engine standards may end up in stationary equipment. Farmers may choose to purchase such equipment.

meet the nonroad emission standards for that engine, where the engine is part of an engine family that contains engines that otherwise meet the definition of nonroad engine. Such engines will no longer be stationary internal combustion engines. Thus, farmers would not include the emissions from such nonroad engines when they determine whether their agricultural operation is a major source for purposes of Title V permitting or other requirements. We believe that this change will encourage the use of engines certified to nonroad standards, which will result in a reduction in emissions from uncontrolled levels. We believe that farmers will prefer to obtain new engines regulated as nonroad engines, rather than to continue using engines that will be regulated under stationary source permitting requirements including Title V and New Source Review (NSR). Regulations promulgated under Title II focus primarily on compliance by manufacturers rather than users, whereas Title V and NSR focuses compliance requirements on users.

Of course, replacing current engines with new nonroad engines comes at some cost. However, the State of California through its Carl Moyer program has been providing funds to help farmers replace existing engines with newer cleaner engines. Additionally, the US Department of Agriculture, through programs administered by its Natural Resources Conservation Services (NCRS) anticipates making some funding available under the Environmental Quality Incentives Program (EQIP) to the extent practicable for replacement of existing agricultural engines with engines meeting the requirements of our nonroad regulations.

### **What is EPA doing?**

We are revising the definition of nonroad engines to include certain diesel engines that are used in agricultural operations in California that would otherwise not meet the current definition



of nonroad engine. As a result, a diesel engine used in agricultural operations in California that does not meet the current definition, e.g. because it is used in a stationary application, would still be considered a nonroad engine if it is part of an engine family certified by the engine maker to the applicable nonroad engines standards, and at least some of the engines in that engine family meet the current definition of nonroad engine.

Internal combustion engines are often manufactured for use in many different applications. Engines that are part of an engine family that has been certified by EPA to meet applicable nonroad engine standards may get used in either portable or stationary applications. Under the current definition, only the engines used in mobile applications meet the definition of nonroad engine and those used in stationary applications do not. Under this revision, an engine in that certified engine family that is used in agricultural operations in California would continue to meet the definition of nonroad irrespective of its use as long as some engines in the engine family are used in portable applications.

This rule change does not require farmers in California to replace existing engines with new engines certified to the nonroad standards. However, for farmers who have already made this replacement or who do so in the future, their engines will be treated by EPA as nonroad engines, subject to the mobile source requirements established under Title II of the Clean Air Act, rather than as stationary engines subject to the stationary source requirements of Title I and V of the Clean Air Act. Those engines that are not replaced will continue to be regarded as stationary sources subject to those requirements.

**Why is EPA making this change?**

As discussed below, EPA believes that allowing diesel agricultural engines in California to be classified as nonroad engines if they are certified to those standards will result in more emission reductions than would otherwise occur if such engines remained subject to the stationary source requirements and that these reductions will occur more quickly than if these engines continue to be regulated as stationary sources.

Engines used in stationary applications on farms in California have previously not been regulated under the stationary source requirements of the Clean Air Act, including Title V requirements. Effective November 14, 2002, such engines became subject to the Title V permit program pursuant to EPA's regulations at 40 CFR part 71.<sup>4</sup> Title V, however, does not require subject sources to reduce emissions from the source's operation. The main goal of Title V is to improve a source's compliance with all Clean Air Act requirements to which it is subject. New Source Review requirements of the Clean Air Act requires emission controls be evaluated and possibly installed for new major sources or existing major sources which perform a significant modification. While New Source Review and other requirements under Title I or Title V (e.g., Reasonably Available Control Technology requirements for major sources of NO<sub>x</sub> required under Title I) may lead to emission reduction for some engines in the future, it is unclear to what extent agricultural engines in California would be required to reduce emissions as a result of such requirements. Finally, even assuming potential future emission controls for some of these engines that could result from stationary source requirements, it is not expected that such controls would result in greater total emission reductions compared to what would result from using engines meeting the applicable nonroad emission standards.

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<sup>4</sup>Federal Register 63551 (October 15, 2002)

In contrast, regulations for diesel nonroad engines establish federal emission standards for these engines and a pre-production certification procedure to ensure compliance with the standards, and include various other compliance and enforcement measures. These standards require substantial control of emissions and are generally designed to “achieve the greatest degree of emission reduction achievable through the application of [available] technology..., giving appropriate consideration to ...cost...noise, energy and safety factors.” See Clean Air Act section 213(a)(3). These regulations have been in effect beginning with the 1996 model year. The so called “Tier 2” version of these regulations is currently being phased in and will result in a further improvement in emission performance. More stringent “Tier 3” standards will be phased in beginning with the 2006 model year. Additionally, EPA is developing another set of more stringent nonroad emission standards which we anticipate will very substantially improve the emission performance of new nonroad engines in the future. This sequence of increasingly more stringent emission regulations for these new nonroad diesel engines will assure that the nonroad requirements result in the maximum feasible emission controls we can anticipate for at least the next decade or so. If engines meeting these nonroad standards are extensively used in agricultural applications, maximum feasible emission reductions should result. This regulatory amendment is intended to encourage the widespread use of such nonroad engines for all agricultural pump applications in the State of California.

### **What is current emission performance of these stationary engines?**

We estimate that approximately 3,700 stationary diesel engines are used in agricultural applications in California, primarily for powering irrigation pumps such as those used for crop

irrigation and for tending livestock. Some of these are quite old, dating as far back as 1960. However, between 1999 and 2001 approximately 1,500 engines were replaced through a state financed program known as the Carl Moyer program. Under the Carl Moyer program, existing stationary diesel engines were replaced with new engines of similar power and performance that were also certified to meet the nonroad emission standards. It is estimated that this program reduced oxides of nitrogen (NOx) emissions statewide in California by over 1,750 tons per year. The remaining approximately 2,200 stationary engines are estimated to have average emission levels approximately 8.76 g/bhp-hr, which is about twice as much as the emissions of a nonroad engine manufactured to current (i.e. Tier 2) nonroad standards (4.8 to 4.9 g/hp-hr NOx + HMHC for engines between 100 - 750 hr). Current nonroad standards also require emissions of particulate matter (PM) to be approximately 40 percent lower than Tier 1 levels.

### **What is the impact of these stationary source emissions on air quality?**

Particularly in major farming areas such as the San Joaquin Valley, NOx emissions from stationary diesel engines represent approximately 5% of the total NOx emissions inventory, thus contributing to the ozone and PM-10 non-attainment status of the area. Currently, agricultural stationary source diesel engines represent a significant source of NOx emissions from agricultural activities in California. These engines also emit particulate matter directly.

Thus, replacing these relatively dirty stationary diesel engines with much cleaner currently available diesel engines will help air quality immediately. The anticipated future standards which are expected to further reduce emissions from nonroad engines will also mean that new agricultural engines in California should have even better emission performance in the future,

providing more emission benefits as farmers replace their engines in later years.

### **What would happen if this change were not made?**

Under Title V, farms need to assess their inventories of emissions. If the total of these emissions exceeds a certain level (called the major source threshold), they would be subject to the permitting requirements of Titles I and V of the CAA. One of these permitting requirements is the NSR program. NSR requires major stationary sources that desire to construct for the first time or to modify their facility to get a NSR permit (also called a preconstruction permit) and meet emission control requirements. The other permitting requirement is EPA's operating permits program. This requires major stationary sources to get an operating permit, but does not require emission control. Thus, farm engines classified as stationary sources and operated on a farm which has collective emissions great enough to trigger the major source threshold would be subject to both these permitting programs. Under today's action, stationary farm engines that meet the nonroad certification requirement would not be subject to these two permitting programs. They also would not be subject to other potential state or local requirements directed specifically at stationary sources (e.g. NO<sub>x</sub> RACT programs under Title I), but could be subject to other state or local requirements directed at nonroad engines (e.g. state nonroad engine emission standards or use restrictions).

### **What do we expect will happen as a result of this change?**

As noted above, stationary engines in agricultural applications have in the past not been required to control their emissions under either federal regulations or under any State of California

regulation or program aimed at improving air quality. In most cases, diesel engines represent the predominant source of NOx emissions on the farm. Even after taking into account the engines that were already replaced under the Carl Moyer program, we estimate that around 2,200 uncontrolled stationary diesel agricultural engines remain in use in California. We estimate that replacing these over the next two years with engines meeting the existing Tier 2 and Tier 3 nonroad emission standards would result in a reduction of up to 4,400 tons of NOx annually from agricultural operations. Particularly in areas with intensive levels of farming, such reductions would be significant. We estimate replacing the current stationary diesel engines with new nonroad engines would reduce NOx emission for all current agricultural diesel engines, both stationary and nonroad, by about 20 percent. It would also represent a significant reduction in direct PM emissions from such engines.

This regulatory change will specify that stationary diesel engines used in agricultural applications in California be treated as nonroad sources if they otherwise meet the applicable nonroad emission requirements and are part of an engine family that includes engines that otherwise meet the nonroad engine definition. As a voluntary program, not all farming operations may choose to switch their stationary diesel engines to compliant nonroad engines. However, under Title V, agricultural operations have to inventory their sources of stationary emissions and estimate the combined level of annual emissions from these sources. For ozone nonattainment areas, operations which exceed an annual air emissions threshold for a pollutant (50 tons per year for areas designated as having “serious” air pollution, 25 tons per year for areas designated as having “severe” air pollution and 10 tons per year for areas designated as having “extreme” air pollution) are designated as “major” sources of air pollution and have to annually report these

emissions. For PM-10 nonattainment areas, the thresholds are 100 tons for operations in moderate nonattainment areas and 70 tons for areas in serious nonattainment. Additionally, operations designated as “major” stationary sources must meet the NSR and NO<sub>x</sub> RACT requirements discussed below. For a significant number of agricultural operations, switching from their existing stationary source diesel engines to new nonroad certified engines will remove these engines from the stationary source category, reducing farms’ stationary source emissions enough so that they will no longer be considered major sources of NO<sub>x</sub> emissions, thus avoiding the obligations noted above. For those remaining agricultural operations which would still exceed the “major” source threshold even after switching to nonroad certified engines, these operations may choose to make this switch anyway as this will reduce some of the reporting and other procedural obligations under any potential future stationary source control programs. Finally, we anticipate that some of the cost of the new engines may be funded by the USDA, consistent with eligibility requirements under the EQIP or perhaps via continued funding under the State of California’s Carl Moyer program. For these reasons, we believe that it is likely that all agricultural pump engines currently used in operations which would otherwise exceed the threshold for major source designation and subject to regulation under Title V will be converted to new nonroad certified engines. In addition, as this regulation will encourage the manufacture of agricultural equipment containing engines meeting the nonroad engine standards, it is also likely that this approach will result in greater use of lower-emitting agricultural engines even in locations that do not exceed major source thresholds.

As noted above, this is a voluntary program so the agricultural operation has the opportunity to choose to take advantage of this regulation change or not. No adverse impact on

agricultural operations is anticipated under this rule.

While this rule would exclude a set of sources in California from certain provisions of Title I and V, we would expect a lesser degree of emission control from these engines if this regulation change were not being adopted. The State or localities may choose not to require controls for many engines, particularly those that are not located in a major source. Those engines not on farms designated “major” sources may not be controlled, and it is not clear that even engines that are controlled would be controlled to the same level of emissions as nonroad certified engines. It also is important to note that California has the authority to promulgate its own more stringent nonroad engine standards to meet its air quality needs, but the State has not chosen to exercise this option to date. Since the nonroad rules are generally aimed at achieving the greatest emission control available, it would be highly unlikely that stationary source controls would result in any greater control.

NSR requirements, which apply only to new or modified sources, would require Lowest Achievable Emissions Rate (LAER)<sup>5</sup> in nonattainment areas or Best Achievable Control Technology (BACT)<sup>6</sup> in attainment areas. For internal combustion engines similar to the diesel

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<sup>5</sup>LAER is defined as the most stringent emission limitation derived from either of the following: 1) the most stringent emission limitation contained in the implementation plan of any State for such class or category of source; or 2) the most stringent emission limitation achieved in practice by such class or category of source. CAA Section 171(3)

<sup>6</sup>The BACT requirement is defined as: "an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Clean Air Act which would be emitted from any proposed major stationary source or major modification which the Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel



agricultural engines affected by this rule, no single industry-wide technology has been generally determined to be LAER or BACT, but some recent local decisions regarding LAER and BACT in California indicate that diesel engines have not generally had to meet NO<sub>x</sub> emission standards more stringent than current Title II standards.

In addition, the Clean Air Act requires Reasonably Available Control Technology (RACT) for major NO<sub>x</sub> stationary sources in most ozone nonattainment areas.<sup>7</sup> We have defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. 44 Fed. Reg. 53762 (September 17, 1979). RACT may require technology that has been applied to similar, but not necessarily identical, source categories. 57 Fed. Reg. 55620 (November 25, 1992). There has been no source category-wide RACT determination for these engines, but we believe it is unlikely that RACT requirements for these engines would be more stringent, and in some cases they may be less stringent, than the applicable nonroad engine standards.

Finally, any emission reductions under the stationary source provisions would occur later than anticipated via this rule change. While NSR and other Title I requirements may at some

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combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the Administrator determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results." 40CFR52.21(b)(12)

<sup>7</sup> There are similar RACM requirements in PM -10 nonattainment areas.

point begin to be applied to agricultural sources, implementation of such requirements would have to allow for the lead time needed to take regulatory and/or legislative action to promulgate such regulations and the lead time needed to implement such regulations.

There are some restrictions on state and local ability to regulate nonroad engines. See Clean Air Act section 209(e). States and local jurisdictions may not promulgate their own emission standards for nonroad engines. However, the State of California may promulgate and enforce standards for all nonroad agricultural engines, except new engines under 175 horsepower, if the state receives authorization from EPA to do so. Though California must make certain showings to receive this authorization, the Clean Air Act provides considerable deference to California to promulgate its own standards. Even for engines below 175 horsepower, California can receive authorization to promulgate standards for such engines if they are not standards affecting new (i.e. “showroom new”) engines.

In addition, states and localities may promulgate use restrictions for such engines, such as time-of-use restrictions and fuel restrictions. These requirements, as well as the state standards discussed in the paragraph above, may be enacted by state and local entities to help areas meet the attainment requirements under the Act by achieving even greater NO<sub>x</sub> and PM reductions.

### **Why are only agricultural engines in the State of California covered by this rule change?**

This rule represents a small deviation from the general manner in which EPA has delineated the boundary between nonroad engines and stationary internal combustion engines. EPA has in the past based the definition on whether the engine will be used in a mobile or

stationary manner, not on other characteristics such as engine size or the type of work, or industrial category of work, in which the engine was engaged. EPA believes that the particular circumstances of these California agricultural engines make it appropriate for EPA to use a somewhat different approach in this targeted rule.<sup>8</sup> First, the engines being reclassified in this rule are doing work that is indistinguishable from work done by engines already classified as nonroad engines - in fact, as noted above agricultural operations often have a combination of nonroad and stationary engines performing the same function, such as pumping water for crop irrigation or livestock watering. Moreover, the certified engines that would be defined as nonroad engines by this regulatory change are engines that are part of engine families that have been certified for use and are used in other mobile applications. Therefore, many of the certified engines affected by this rule are in fact indistinguishable from other certified nonroad engines.

More importantly, the unique circumstances in California make this revision appropriate for these engines. As noted above, unlike other stationary sources that are already subject to stationary source emission controls, farm engines have not historically been subject to stationary source emission control regulations. The approach we use in this rule basically allows a farm to voluntarily reduce emissions from its engines in a manner that will result in definite emission reductions that are likely greater and more rapid than would be achieved under the previous approach. This rule will thus not disturb existing regulatory programs in a way that a broader rule would.

This revision is particularly appropriate for California. California is uniquely positioned

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<sup>8</sup> The use of targeted rules of limited scope, especially in the context of a voluntary program, is similar to other projects in which EPA has engaged.

as the only state that may promulgate its own standards for nonroad engines under section 209(b). Other states may only promulgate standards identical to any California chooses to adopt. Since California is in a unique position to continue promulgating standards regulating these engines as nonroad engines, it can implement effective emission control programs for these engines. Also, given the particular air quality concerns and the need for reductions of NO<sub>x</sub> in California as well as the opportunity to significantly reduce emissions from agricultural pump engines (the opportunity benefitted by the potential funding through the Carl Moyer program and the US Department of Agriculture), farms in California are uniquely situated to take advantage of this regulatory provision.

This rule is in many ways an extension of the policy behind California's existing Carl Moyer program to provide new certified engines to these farmers. That program provided funding for farmers that purchased engines meeting nonroad standards, whereas this revision provides regulatory changes that encourage the use of certified engines. EPA believes that this action is similar in many ways to programs EPA has implemented and continues to consider, under which EPA offers flexibility in its regulations, etc. in site-specific situations to encourage companies, communities, and other project sponsors to develop "cleaner, cheaper and smarter" alternatives to the current system. See 62 Fed. Reg. 19872 (April 23, 1997), for example.

It is not clear that this approach would be appropriate in other circumstances, given the different historical and environmental contexts and different types of engines used. Given the potentially significant reductions that this program will facilitate, the general lack of reductions previously required under the existing regulatory approach, the voluntary nature of this approach, available funding and the limited scope of this approach, EPA believes that this rule is appropriate

and justified.

### **What are the statutory provisions underlying this rule change?**

The Clean Air Act's statutory provisions are relatively ambiguous regarding the specific boundaries between nonroad engines and stationary internal combustion engines. Section 216(10) states that a nonroad engine is "an internal combustion engine ... that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 111 or section 202." Section 111(a)(3) states that "stationary source means any building, structure, facility or installation which emits or may emit any air pollutant. Nothing in Title II of this Act relating to nonroad engines shall be construed to apply to stationary internal combustion engines."

EPA's prior rulemaking that clarified the delineation between nonroad and stationary engine focused on the use and application of the engine, and did so on an engine by engine basis. This targeted revision also focuses on the application and use of engines, but in a broader manner. Under this approach, EPA looks at the engine family as a group, not engine by engine. Where the engine family contains engines that are, under the previous definition, nonroad engines, EPA will allow other specific engines that are essentially identical to be considered nonroad engines. We believe this approach is reasonable in these circumstances for the reasons delineated above.

### **III. Statutory and Executive Order Reviews**

#### **A. Executive Order 12866: Regulatory Planning and Review**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be “significant” and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a “significant regulatory action” as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this final rule is not a “significant regulatory action.”

#### **B. Paperwork Reduction Act**

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as

defined therein.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities, in particular because this rule change does not mandate that farms replace any existing engine.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will significantly or uniquely affect small governments.

We have determined that this rule does not contain a federal mandate that may result in estimated expenditures of more than \$100 million to the private sector in any single year. This action has the net effect of revising certain provisions of the Tier 2 rule. Therefore, the requirements of the UMRA do not apply to this action.

#### E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure “meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of



government.

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or we consults with state and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the Agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule revises certain provisions of earlier rules that adopted national standards to control emissions from nonroad diesel engines. The requirements of the rule will be

enforced by the federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (59 FR 22951, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not uniquely affect the communities of American Indian tribal governments. Furthermore, today's rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5-501 of the Executive

Order directs us to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d) of Public Law 104-113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

No new technical standards are established in today's rule.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to Congress and the comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a ``major rule" as defined by 5 U.S.C. 804(2). This rule will be effective (insert date 45 days after FR publication).

**Direct Final Rule – Control of Emissions From New Nonroad Diesel Engines: Amendments to the Nonroad Engine Definition, page 29 of 31.**

**IV. Statutory Provisions and Legal Authority**

Statutory authority for today's final rule is found in the Clean Air Act, 42 U.S.C. 7401 et seq., in particular, section 213 of the Act, 42 U.S.C. 7547. This rule is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d). This rule will affect not only persons in California but also the manufacturers outside the State who manufacture engines and equipment for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability. Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit.

List of Subjects in 40 CFR Part 89

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated:

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Christine Todd Whitman, Administrator.

For the reasons set forth in the preamble, chapter I, title 40 of the Code of Federal

Regulations is amended as follows:

PART 89--CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD  
COMPRESSION - IGNITION ENGINES

1. The authority for part 89 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7527, 7541, 7542, 7543, 7545, 7547,  
7549, 7550 and 7601(a).

Subpart A--[Amended]

2. Section 89.2 is amended by amending paragraph (1) of the definition for nonroad engine to read as follows:

Sec. 89.2 Definitions.

\*\*\*\*\*

Nonroad engine means:

(1)\*\*\*\*\*

(iii) \*\*\* or

(iv) That is a compression-ignition engine included in an engine family certified to meet applicable nonroad emission requirements of this Part if: (1) the engine is used in agricultural operations in the growing of crops or raising of fowl or animals in the State of California; and (2) any other engines in the certified engine family otherwise meet the definition of nonroad engine.